

REMARKS

This Amendment is filed in response to the Office Action mailed on March 31, 2000. With this Amendment, no claims are added, and no claims are canceled. Claim 15 has been amended as indicated above to remedy a minor typographical error. Upon entry of this Amendment, the above-identified application will continue to include claims 1-27.

Patentably Distinct and Independent Invention Election Requirement

In the Office Action, the Examiner alleged that three patentably distinct and independent inventions are claimed and characterized these allegedly distinct and independent inventions in Groups I, II, and III. The Examiner placed claims "1-14, 19-24, drawn to methods of feed administration, classified in class 424, subclass 438" in Group I, placed claims "15-18, drawn to Feed Production, classified in class 426, subclass 54," in Group II, and placed claims "25-27, drawn to Feed, classified in class 514, subclass 738," in Group III. After placing the claims in these three different groups, the Examiner indicated that Applicant must elect either the invention of Group I, the Group II, or the Group III for prosecution in the above-identified application. Consequently, Applicant hereby elects the invention of Group I, in which the Examiner has placed claims 1-14 and 19-24, for prosecution in the above-identified application, with traverse.

In the Office Action, with respect to the inventions of Groups II and Group III, the Examiner stated:

Inventions of Groups II and III are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another materially different process. (MEP § 806.05(f)). In the instant case process as claimed can be used to make a materially different product; bait.

The Examiner's assertion that the method of the present invention, as defined in claims 15-18, "can be used to make a materially different product; bait" is erroneous, since the statement disregards the preamble details of claim 15. Claims 16-18 each also require the preamble details of claim 15, since claims 16-18 each depend from claim 15.

Claim 15 defines a "method of producing feed for a ruminant," as follows:

15. *(Amended) A method of producing feed for a ruminant, the method comprising:
combining a sugar alcohol and at least one additional component to form the feed; and
protecting the sugar alcohol from significant alteration in the rumen of the ruminant.*

Due to their dependence from claim 15, claims 16-18, are also specifically defined in terms of a method of producing ruminant feed. Certainly, the ruminant feed produced by this method of claims 15-18 could be incorporated in some type of a bait. However, a bait production technique that incorporates the ruminant feed produced by the method of claims 15-18 would not fall within the confines of claims 15-18. **As claimed**, the ruminant feed production method of claim 15 is directed to production of ruminant feed, and not to a bait production method. Consequently, the Examiner's use of bait as an alleged example of a "materially different product" that may be made in accordance with the method of claim 15 is erroneous, and the election requirement as between the inventions of Groups II and III is improper and unsupported and should therefore be withdrawn.

Additionally, Applicant notes that the only statement in support of the alleged election requirement between the inventions of Groups I and II is the following sentence that was provided by the Examiner: "The process of Groups I and II are patentably distinct independent inventions." Beyond this bare conclusory assertion, the Examiner provided no explanation or support for the election requirement between the inventions of Groups I and II. Therefore, due to this complete lack of explanation, the Examiner's election requirement between the inventions of Groups I and II is improper and unsupported and should therefore be withdrawn.

Based upon the foregoing comments, Applicant respectfully requests that the Examiner reconsider and withdraw the election requirement between the inventions of Groups I and II and between the inventions of Groups II and III.

Species Election Requirement

In the Office Action, the Examiner additionally alleged that multiple patentably distinct species of the claimed invention exist:

This application contains claims directed to the following patentably distinct species of the claimed invention: species of administration; oral, surgical, infusion.

With respect to this identification of alleged "species of administration," Applicant traverses the Examiner's designation of "surgical" and "infusion" as distinct species. The details provided at page 9, line 21, through page 10, line 23, of the above-identified application explain how a ruminant may be surgically fitted with an abomasol infusion tube 22, such as the fistula that is defined in claims 6 and 22. In accordance with the specification of the above-identified application, abomasol infusion in accordance with the present invention occurs after first surgically fitting the ruminant with the abomasol infusion tube or fistula. Thus, the Examiner's comments about "surgical, infusion," do not demonstrate that these are separate and distinct "species of administration." Instead, these alleged separate and distinct "species of administration" work in conjunction with each other to achieve the claimed abomasol infusion. Consequently, based upon this brief explanation, Applicant respectfully requests that the Examiner reconsider and revise the Examiner's definition of "species of administration".

Next, the Examiner stated:

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1, 5, 8-10, 12-14, 19-21, and 24 generic.

In accordance with this species election requirement of the Examiner, Applicant hereby elects the oral administration species.

Additionally, with respect to this species election, the Examiner stated:

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added.

As indicated above, Applicant has elected the oral administration species to satisfy the Examiner's species election requirement. Also, Applicant notes that claims 1-4, 8-11, and 13-14 read on the elected species. These comments are believed to satisfactorily address the Examiner's species election requirement.

CONCLUSION

As indicated above, Applicant has elected the invention of Group I in which the Examiner has placed claims 1-14 and 19-24 for prosecution in the above-identified application, with traverse of the Examiner's alleged distinction between the Group I and Group II inventions and between the Group II and Group III inventions. Additionally, as indicated above, Applicant has elected the oral administration species in response to the Examiner's species election requirement. Additionally, Applicant traverses the Examiner's "species of administration" description: "oral, surgical, infusion."

Applicant believes that claims 1-27 are each allowable. Consequently, Applicant respectfully requests that the Examiner consider and allow claims 1-27. Furthermore, reconsideration of the Examiner's election requirement as between Group I and Group II and between Group II and Group III is respectfully requested in light of the comments provided above.

The Examiner is invited to contact Applicant's below-named attorney, Philip F. Fox, to discuss any aspect of the election requirement or of the above-identified application.

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Application No.: 09/239,873

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The Commissioner is authorized to charge payment of any additional fees associated with this paper or credit any overpayment to Deposit Account No. 11-0982. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

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